

SB 1335 – Food Service Packaging Informal Rulemaking Public Workshop #1

*CalRecycle Public Workshop
April 10, 2019
Email questions for this workshop to:
SB1335@Calrecycle.ca.gov*



Overview

- Introduction
- Key statutory components
- Rulemaking timeline
- Development of regulatory text
- Next steps

Introduction

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Purpose of Rulemaking

- Clarify ambiguous terms and requirements in statute
- Consult with state agencies and stakeholders
- Develop criteria necessary to evaluate food service packaging
- Establish process to maintain and update list of approved food service packaging

CalRecycle's Statutory Duties

| PRC | Duty |
|-----------------|--|
| § 42370.2(a)(1) | Establish a process, and develop criteria, for determining types of food service packaging that is reusable, recyclable, or compostable. |
| § 42370.2(f)(2) | Consulting with stakeholders the department may request information in developing regulations. |
| § 42370.3(a) | Develop a list of approved types of food service packaging that may be used by food service facilities and publish the list on its Internet Web site within 90 days of approved adopted regulations. |
| § 42370.3(b) | Evaluate the list of approved types of food service packaging no less than once every five years. |

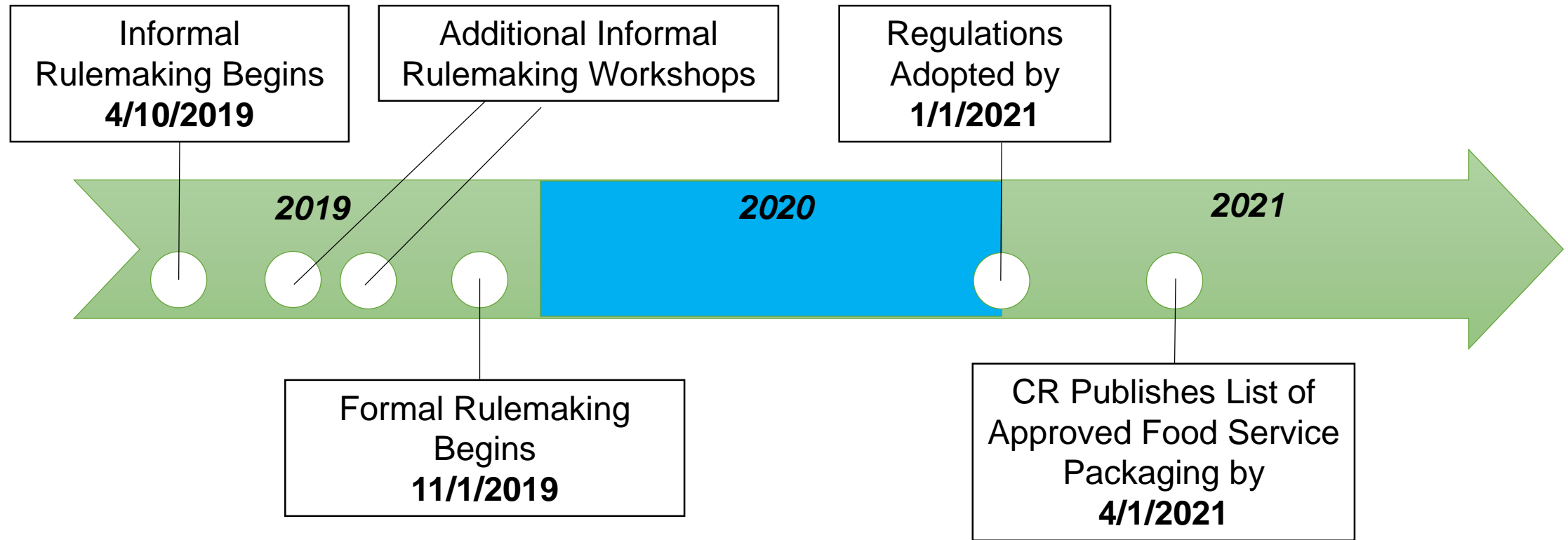
Regulatory Text Development

- Consideration of definitions and terminology
- Determining if food service packaging is reusable, recyclable or compostable
 - Statute specifies minimum considerations. Others?
- Consultation with local jurisdictions and solid waste, recycling and composting facilities
 - Research processes, contamination, and markets
- Consideration of litter, toxicity, and wildlife impacts
- Process to maintain and update list

Department of General Services

- Statutory Duties include:
 - Identify suppliers, distributors, brokers, or manufacturers of approved food service packaging, when feasible
 - Publish list of approved food service packaging and update State Contracting Manual
 - Ensure contracts with food service facilities are compliant with SB 1335
 - Revise state contracting and procurement rules

SB 1335 Implementation Timeline



CR – CalRecycle

Discussion

Definitions

- Beverage container
- Food service facility
- Food service packaging
- Prepared food

Food Service Facility

§ 42370.1(b) “**Food service facility**” means an operation or business that is located in a state-owned facility, operating on or acting as a concessionaire on state property, or under contract to provide food service to a state agency and that stores, prepares, packages, serves, vends, or otherwise provides prepared food. “**Food service facility**” may include, but is not limited to, a cafeteria, commissary, restaurant, deli, store, shop, market, or mobile food unit.

1. Located in a State-owned facility
2. Operating on State property or acting as a concessionaire on State property
3. Under contract to provide food service to a State agency

Questions for Stakeholders

- Is the definition of “food service facility” sufficiently clear to describe the universe of state agencies required to comply with SB 1335?

Food Service Packaging

§ 42370.1(c) **“Food service packaging”** means a product used for serving or transporting prepared, ready-to-consume food or beverages, including, but not limited to, plates, cups, bowls, trays, and hinged or lidded containers. **“Food service packaging”** does not include beverage containers or single-use disposable items, such as straws, cup lids, plastic bags, and utensils, or single-use disposable packaging for unprepared foods.

Questions for Stakeholders

- Is the definition of “food service packaging” sufficiently clear to describe the types of food service packaging that are covered under SB 1335?
- Do bags refer only to open-top carry-out style bags as in SB 270?

Prepared Food

§ 42370.1(d) **“Prepared food”** means a food or beverage prepared for consumption on or off a food service facility’s premises, using any cooking or **food preparation technique**. **“Prepared food”** does not include prepackaged, **sealed food** that is **mass produced by a third party** off the premises of the food service facility.

Questions for Stakeholders

- Is the definition of “prepared food” sufficiently clear?
- What constitutes “Prepared”?
 - Defrosting? Portioning? Cutting?
- Does the term “sealed food” need further clarification?
 - Air-tight? Adhesives?
- What does it mean to be mass produced by a third party?
 - How much needs to be produced?
 - Vertically integrated organizations count as third party?

Criteria and Process to Determine...

- Reusable
- Recyclable
- Compostable
- Development and maintenance of list

Reusable Food Service Packaging

§ 42370.2(c)(1-2) For purposes of determining if a type of food service packaging is reusable pursuant to subdivision (a), the director shall consider, at a minimum, all of the following criteria:

- (1) Whether the packaging is **conventionally disposed** of after a single use.
- (2) Whether the packaging is **sufficiently durable and washable** to allow for **multiple uses**.

Questions for Stakeholders

- How many uses should be required for a type of food service packaging to be considered reusable?
- How do we determine if something is “conventionally” disposed after a single use?
- Is there a cleanliness standard for food service packaging that is reusable?
- Does the item need to be reused for the same purpose?
- Does the the term “durable” require further clarification?
- Are there other terms that need clarification?

Recyclable Food Service Packaging

§ 42370.2(d)(1-6) For purposes of determining if a type of food service packaging is recyclable pursuant to subdivision (a), the director shall consider, at a minimum, all of the following criteria:

- (1) Whether the type of food packaging is eligible to be labeled as “recyclable” in accordance with the uniform standards contained in Article 7 (commencing with Section 17850) of Chapter 1 of Part 3 of Division 7 of the Business and Professions Code.
- (2) Whether the type of food service packaging is **regularly collected, separated, and cleansed** for recycling by recycling service providers.
- (3) Whether the type of food service packaging is **regularly sorted and aggregated** in to **defined streams** for **recycling processes**.
- (4) Whether the type of food service packaging is **regularly processed and reclaimed or recycled** with **commercial recycling processes**.
- (5) Whether the food service packaging material **regularly becomes feedstock** that is used in the production of **new products**.
- (6) Whether the food service packaging material is recycled in **sufficient quantity**, and is of **sufficient quality**, to **maintain a market value**.

Questions for Stakeholders

- What constitutes recycling?
 - Chemical recycling? ADC?
- What is a reasonable frequency for a type of food service packaging to be regularly collected, separated, cleansed, sorted, aggregated, processed, reclaimed, or recycled?
- Does the term “cleansed” require further clarification?
 - Same standards as for foodservice dishwashers?
- What is a defined stream for recycling processes?
 - Existing spec? Maximum contamination rates?
- What are commercial recycling processes?
 - How do “Private” recycling programs factor into this?

Questions for Stakeholders

- What does it mean for a type of food service packaging to regularly become feedstock that is used in the production of new products?
 - How do we obtain data regarding the ultimate use of this material?
- Does the term “new product” require further clarification?
 - Is pellet production considered a new product?
- What does it mean for a type of food service packaging to be recycled in sufficient quantity, and is of sufficient quality, to maintain a market value?
- What does it mean to maintain a market value?
- Are there other terms that need clarification?

Compostable Food Service Packaging

§ 42370.2(e)(1-4) For purposes of determining if a type of food service packaging is compostable pursuant to subdivision (a), the director shall consider, at a minimum, all of the following criteria:

- (1) Whether the food service packaging will, in a **safe and timely manner, break down** or otherwise become part of **usable compost** that can be composted in a **public or private aerobic compost facility** designed for and capable of processing post-consumer food waste and food-soiled paper.
- (2) Whether food service packaging made from plastic is certified to meet the ASTM standard specification identified in either subparagraph (A) or (C) of paragraph (1) of subdivision (b) of Section 42356 and adopted in accordance with Section 42356.1, if applicable.
- (3) Whether the food service packaging is **regularly collected and accepted** for processing at public and private compost facilities.
- (4) Whether the type of food service packaging is eligible to be labeled as “compostable” in accordance with the uniform standards contained in Article 7 (commencing with Section 17580) of Chapter 1 of Part 3 of Division 7 of the Business and Professions Code.

Questions for Stakeholders

- Does “safe and timely manner” require further clarification?
- Does the term “break down” require further clarification?
- What does it mean to become “part of usable compost”?
- What types of facilities should be considered a public or private aerobic compost facility?
 - What about anaerobic facilities?
- What does it mean for a type of food service packaging to be regularly collected and accepted for processing at public and private compost facilities?
- Other terms that need clarification?

List of Approved Food Service Packaging

§ **42370.2(b)(1)** The regulations adopted pursuant to subdivision (a) shall be used for determining the types of food service packaging that may be included on the list developed pursuant to Section 42370.3.

(b)(2) The regulations shall also specify how the list shall be maintained and updated, in accordance with subdivision (b) of Section 42370.3.

§ **42370.3(b)** The department shall regularly, but no less than once every five years, evaluate the list of approved types of food service packaging to determine whether each of the types of approved food service packaging is reusable, recyclable, or compostable. After evaluation, the department may amend the list to remove or add a type of food service packaging based on whether it is reusable, recyclable, or compostable. The department shall post any updates to the list on its Internet Web site.

Questions for Stakeholders

- At what level of specificity will products be evaluated?
 - SKU, categories, etc.?
- What criteria should CalRecycle use to re-evaluate the list or part of the list prior to the 5-year requirement?
- How does a manufacturer request a new product be evaluated?

General Questions

- Will a process be established to allow innovative materials with no established market to prove themselves?
- What about private recovery and recycling efforts?
- Will regionalization be addressed?

Next Steps: Data Gathering, Research & Consultation

- Identify types and costs of food service packaging currently used at state facilities
- Research types and costs of reusable food service packaging and systems
- Organize site visits at facilities to evaluate real world composting and recycling processes
- Continue consulting with DTSC, OPC, OEHHA, and other agencies to assess litter and potential toxicity concerns
- Begin economic impact analysis

CalRecycle Regulatory Process Next Steps

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| June 4, 2019 | Informal Rulemaking Workshop #2: Draft Regulatory Text |
| October/November 2019 | Begin Formal Rulemaking |
| January 1, 2021 | Adopt Final Regulations |

CalRecycle Contact Information

- Send comments and questions to SB 1335 Program email: SB1335@calrecycle.ca.gov
- Staff Contacts:
 - Andrew.Parrish@calrecycle.ca.gov or 916-341-6458
 - Robert.Carlson@calrecycle.ca.gov or 916-341-6673
- Subscribe to the SB 1335 listserv at:
<https://www2.calrecycle.ca.gov/Listservs/Subscribe/156>